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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,989

01/10/2007

Didier Hoarau

065691-0452

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23428

7590

09/02/2009

FOLEY AND LARDNER LLP

SUITE 500

3000 K STREET NW

WASHINGTON, DC 20007

EXAMINER

MAIER, LEIGH C

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

09/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,989

Applicant(s)

HOARAU ET AL.

Examiner

Leigh C. Maier

Art Unit

1623

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 15, 16, 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-14, 17-19, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/15/06: 3/12/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group II, claims 9-14, 17-19, 22 and 23, in the reply filed on June 12, 2009 is acknowledged. Claims 1-8, 15, 16, 20 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(c), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-14, 17-19, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diancourt et al (J. Bioactive Compatible Polym., 1996) in view of Zhu et al (Acct. Chem. Res., 2002) and Lee et al (Colloid Polym. Sci., 2000).

Diancourt teaches the preparation of N-desulfated heparin hydrophobized by covalent attachment of various acids, including cholic acid. The heparin is 13% N-desulfated, allowing for 13% modification—attachment of 13 (about 15) hydrophobic acid moieties per 100 disaccharides. See page 204, last paragraph. The hydrophobized N-desulfated heparin form ~300 nm aggregates in aqueous solution. See abstract.

Diancourt further notes that hydrophobization of polyelectrolytes is known generally as a means to prepare aggregated systems useful for the entrapment and transport of hydrophobic drug molecules. See page 204, lines 7-13. The reference further recommends the disclosed modified heparin aggregates for this same purpose. See page 204, last paragraph and Conclusion.

The reference does not exemplify the incorporation of an active agent into the nanoparticles or a method for increasing the solubility of an active agent by said incorporation.

It is known to modify polymers of all types, including polysaccharides, with bile acids to prepare self-assembling aggregates. See all of Zhu, particularly “Applications of Bile Acid-Containing Polymers” and Figure 7.

Lee teaches the preparation of a bile acid-containing polysaccharide (chitosan) wherein the bile acid is attached through a glucosamine nitrogen as in Diancourt and the instant product. See Figure 1. This modified chitosan has utility for solubilizing adriamycin (doxorubicin – a hydrophobic drug also having several polar groups) by incorporation into the aggregates formed by said chitosan. The drug is incorporated by stirring. See “Preparation of adriamycin-loaded chitosan self-aggregates” At page 1217. This product provides for a gradual release of the active agent.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to prepare the bile acid-modified N-desulfated heparin and incorporate a drug into the nanoparticulate aggregates formed by said modified heparin (solubilizing the drug) because it is expressly suggested in the art. One of ordinary skill would reasonably expect success in doing so because of this express suggestion and the fact that similar hydrophobized polymers, such as chitosan are known for this purpose. It would be within the scope of the artisan to optimize the degree of substitution of the bile acid on the N-desulfated heparin through routine experimentation.

Examiner's hours, phone & fax numbers

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (571) 272-0656. The examiner can normally be reached on Tuesday, Thursday, and Friday 7:30 to 4:00 (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Anna Jiang (571) 272-0627, may be contacted. The fax number for Group 1600, Art Unit 1623 is (571) 273-8300.

Visit the U.S. PTO's site on the World Wide Web at <http://www.uspto.gov>. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more. Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished application is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

/Leigh C. Maier/
Primary Examiner
Art Unit 1623